

NOTICE

ALL MEMBERS OF THE BANKRUPTCY BAR WESTERN DISTRICT OF TEXAS

Please be advised that revised Administrative Procedures for Filing, Signing and Verifying Pleadings and Papers by Electronic Means has been published and are effective immediately. A copy of the revision is attached for your convenience.

Specifically I direct your attention to Section II, Paragraph E and Paragraph F where changes have been made. Basically the procedures eliminate the requirement to submit proposed orders along with applications/motions. Additionally, original exhibits and/or attachments to pleadings should be retained by the filer and a summary of what the exhibit/attachment reflects should be attached to the document being filed.

Also, for your information, several questions on the subject of submission of orders were raised at the Bench Bar Conference held in San Antonio in early September. In an effort to enlighten you on the reasoning behind the changes we have implemented, I ask you to read an informal memorandum prepared by Judge Larry E. Kelly. The memorandum is attached to this notice along with the revised procedures.

Lawrence T. Bick
Clerk of Court

November 14, 2001

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS

**ADMINISTRATIVE PROCEDURES FOR FILING, SIGNING AND
VERIFYING PLEADINGS AND PAPERS BY ELECTRONIC MEANS**

I. REGISTRATION FOR THE ELECTRONIC FILING SYSTEM

A. DESIGNATION OF CASES

The court shall designate which cases shall be assigned to the Electronic Filing System ("System"). The current implementation/activation date can be viewed at the court's Web site www.txwb.uscourts.gov.

B. PASSWORDS

Each attorney is required to use a password to participate in the electronic retrieval and filing of pleadings and other papers in accordance with the System. Registration for a password is governed by Paragraph I.C.

C. REGISTRATION

1. Each attorney desiring to file pleadings or other papers electronically must complete and sign an Attorney Registration Form and a Credit Card Blanket Authorization Form.
2. All signed original Registration Forms and Credit Card Forms shall be mailed to the ECF Help Desk, U.S. Bankruptcy Court, P.O. Box 1439, San Antonio, TX 78295-1439 or delivered to the U.S. Bankruptcy Court, 615 E. Houston St., San Antonio, TX, Attn.: ECF Help Desk.
3. Upon approval of the Credit Card Blanket Authorization Form, each attorney will receive telephonic notice from the Office of the Clerk indicating that an envelope containing the attorney's assigned System password is available for pick-up at the Office of the Clerk. Only the attorney or an authorized representative may pick up the envelope. Out of district attorneys applying for registration may communicate with the Office

of the Clerk to arrange for delivery of the system password.

4. Once registered, an attorney may withdraw from participation in the System by providing the ECF Help Desk with notice of such withdrawal. Such notice must be in writing. Upon receipt, the ECF Help Desk will immediately cancel the attorney's password and will delete the attorney's name from any applicable electronic service list.
5. If any of the information on the Registration changes, e.g., mailing address, e-mail address, etc., the attorney must submit an Amended Registration form to the attention of the ECF Help Desk.

II. FILING AND SERVICE OF DOCUMENTS

A. FILING

1. All petitions, motions, pleadings, memoranda of law, or other documents required to be filed with the court in connection with a case assigned to the System may be electronically filed on the System.
2. When filing expedited matters, the filing attorney shall immediately advise the judge's courtroom deputy clerk of the filing by phone or fax. The telephone and fax numbers for the courtroom deputies are available on the court's Web site at www.txwb.uscourts.gov.

B. SERVICE

1. Whenever a pleading or other paper is filed electronically in accordance with these *Procedures*, the System will automatically generate a "Notice of Electronic Filing" by electronic means at the time of docketing.
2. The filing attorney shall serve the pleading or other paper upon all persons entitled to notice or service in accordance with the applicable rules, or, if service by first class mail is permitted under the rules, the filing attorney may make service in accordance with Paragraph II.B.3 below.
3. An attorney filing a pleading or other paper electronically may serve the Notice of Electronic Filing by electronic means and such service will be considered the equivalent of service of the pleading or other paper by first

class mail, postage prepaid, *if and only if* the recipient of notice or service is a registered participant in the System and agrees in writing with the filer to accept such service in lieu of service by first class mail.

C. SIGNATURES

1. All pleadings and other papers and documents electronically filed shall either contain a scanned image of any signature(s) therein or indicate the signature by putting “/s/ Jane Doe” where the original signature occurs.
2. Filing of Pleadings, Documents and Other Papers Requiring Original or Verified Signatures.

- a. Electronic Filings by Registered Attorneys and Parties with Legal Representation.

Petitions, lists, schedules, statements, amendments, pleadings, affidavits and other documents that must contain original signatures or that requires verification under FRBP 1008 or an unsworn declaration as provided in 28 U.S.C. § 1746 may be filed electronically by attorneys registered in the System. A copy containing an original signature must be retained by the attorney who files such a pleading, document or other paper for four (4) years after the closing of the case.

- b. Other Filings

After docketing, the Clerk shall transmit to the trustee appointed in the case or to the United States Trustee, if the case is a Chapter 9 or 11 case without a case trustee, the originals of all petitions, lists, schedules, statements, amendments, pleadings, affidavits and other documents that must contain original signatures, or which require verification under FRBP 1008 or an unsworn declaration as provided in 28 U.S.C. § 1746.

D. FEES PAYABLE TO THE CLERK

Prior to the electronic filing of any pleading or paper requiring a filing fee, a Credit Card Blanket Authorization Form, which is available on the Court’s web site, must have been received and approved by the Financial Administrator of the Office of the Clerk.

E. ORDERS

1. Orders on Motions with “20 day” or “15 day” “negative notice language” found in Bankruptcy Local Rules 4001(a)(1)(B) or 9014(a).

After the expiration of the last date for serving and filing objections, if none have been filed, the moving party shall submit to the court an order for entry that grants the relief requested in the original pleading. In addition, the following paragraph shall be appended at the end of the order, before the signature line:

The entity submitting this order represents to the court that the underlying motion was filed and served in conformity with the local rules, that no pleading or response has been filed in opposition thereto, and that the relief to be granted by this order is consistent with the relief plead for in that motion.”

Two (2) lines below the line for the court’s signature, at the left margin, the following information regarding the submitting entity shall be submitted:

“This order was prepared and is being submitted by:
Firm name
By _____
Attorney for (party)”

2. All Other Orders

On all pleadings filed without “negative notice language”, moving parties must separately submit a form of order for entry by the court for each pleading for which relief is requested, whether it is an ex parte matter [Bank. L. Rule 9013(c)], a motion seeking expedited treatment [Bank. L. Rule 9013(d)], an application, or a contested matter either in a case or in an adversary proceeding within a case.

3. Cover Sheets

All orders being submitted to the court shall be accompanied by a cover sheet. The court is working on a procedure to enable parties to submit orders electronically which will require a specific description on the “subject line”. The current Order Submission Form found in Appendix L-9022 is outdated. For this reason, the

court's current Cover Sheet found in its local rules as Appendix L-9022 is hereby abrogated and a new form of Cover Sheet substituted therefor, which is to be used for all Orders submitted. The new cover sheet form is attached to this document.

F. ATTACHMENTS TO PLEADINGS AND PROOF OF CLAIMS

All exhibits or attachments to pleadings must be summarized. The summary only is to be attached to the document that is filed with the Court. A copy of the complete exhibit or attachment must be served together with the pleading on entities as specified in L. Rule 9013(g). If a hearing is required, or if the court otherwise orders, the complete exhibit or attachment should be provided to the Court at the time of the hearing and served or provided to any objecting party.

Similarly, all exhibits or attachments to Proof of Claims must be summarized and only the summary is to be attached to the Proof of Claim that is filed with the Court. Pursuant to L. Rule 3002(a), the complete Proof of Claim, including original exhibits, attachments or supporting documentation must be served on the Debtor's attorney (or on the Debtor, if the Debtor is pro se) and any trustee appointed in the case. Upon request, creditors must provide a copy of the original documentation to any party objecting to their claim, as well as to the Court, in the event of a dispute.

G. DOCUMENTS TO BE FILED UNDER SEAL

A motion to file document(s) under seal may be filed electronically; however, the actual document(s) to be filed under seal shall be filed conventionally and only after the motion is granted. The order of the court authorizing the filing of such document(s) under seal will be entered electronically by the Clerk and a paper copy of the order shall be attached to the document(s) under seal and delivered to the Clerk at the time of the filing of the document(s).

H. TITLE OF DOCKET ENTRIES

An attorney who electronically files a pleading or other document shall be responsible for designating a docket entry title for the document by using one of the docket event categories prescribed by the court.

I. CORRECTING DOCKET ENTRIES

Once a document is submitted and becomes part of the case docket, corrections to the docket are made only by the Clerk.

III. PUBLIC ACCESS TO THE SYSTEM DOCKET

A. PUBLIC ACCESS AT THE COURT

Electronic access to the electronic docket and documents filed in the System is available to the public at no charge at each Divisional Office of the Clerk during regular business hours.

B. INTERNET ACCESS

Although any person can retrieve and view documents in the System and access information from it without charge at the Clerk's Offices, electronic access to the System for viewing purposes is otherwise limited to subscribers to the Public Access to Court Electronic Records ("PACER") System and, in accordance with the ruling of the Judicial Conference of the United States, a user fee will be charged for accessing certain detailed case information, such as reviewing filed documents and docket sheets, but excluding review of calendars and similar general information. Information regarding subscribing to PACER is available at the court's Web site at www.txwb.uscourts.gov and at each Divisional Office of the Clerk.

C. CONVENTIONAL COPIES AND CERTIFIED COPIES

Conventional copies and certified copies of electronically filed documents may be purchased at the Office of the Clerk. The fee for copying and certification will be in accordance with 28 U.S.C. § 1930.

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
_____DIVISION**

ORDER SUBMISSION FORM

RE: [Fill in Case Name & Adversary Style, as applicable]

SUBJECT LINE: [see directions below]

Please Note: You *must* follow the format set out below under “Directions” to fill in the subject line. Order Submission Forms which do not follow this format may be returned with the Order unsigned.

SUBMITTED BY:

(Please include your name, the firm name, address, telephone, fax, and email, as applicable)

DIRECTIONS

~ You *must* use one of the following formats to complete the Subject Line:

Ex Parte - [case or adversary number] e.g. Ex Parte - 00-51234

Expedited - [case or adversary number] e.g. Expedited - 00-51234

Order (no hearing) - [case or adversary number] e.g. Order (no hearing) - 00-51234

Order (hearing set) - [Hearing Date and Time] - [case or adversary number]
e.g. Order (hearing set) - 01/01/01 9:30 a.m. - 00-51234

Suspense - [case or adversary number] e.g. Suspense - 00-51234

~ If the order is on a contested matter, use the case number; if the order or judgment is submitted in an adversary proceeding, use only the adversary number.

~ Use “Order (no hearing)” *only* for orders on matters which are not going to be set for hearing, and which were *not* filed with negative notice language.

~ Use “Order (hearing set)” for any order or judgment on a matter for which a hearing has been set, whether the order is being submitted before or after the hearing setting. Be sure to include the hearing date and time in the following format: “01/01/01 -9:30 a.m.”

~ Use “Suspense” for orders submitted on a pending matter that was filed with “negative notice” language (including adversary motions that are filed on negative notice), and to which there was no objection.

MEMORANDUM

To: Judges Monroe, Clark, King and
Larry Bick

From: Judge Larry Kelly

Date: October 5, 2001

Re: Bar questions on e-filing

After our judges' meeting, I undertook to review the issues surrounding the questions that Mr. Bick sent to us about submission of orders on electronic documents. Here are my suggestions.

To do this, I'll restate the questions and provide answers as I go. Ultimately I believe we'd actually mail our response here to all registered users of cm/ecf (this is where these questions came from); send a copy to our bar presidents; and, post a copy at each clerk's office with a specific notation that documents being modified can also be downloaded from our website at <http://www.txwb.uscourts.gov>.

Q1. Why can't the Judge use the order attached to the motion/application?

We could do this. But remember that this is for electronically filed pleadings/motions or applications-thus we'd have to type in the case # for each case, go through the docket sheet to find the particular pleading, click on it, go to the end, and separately print each and every order one at a time. Then we'd sign the hard copy and the staff would then "scan" it back into the system. Of course there is the issue of what would even trigger the knowledge that there is a pleading that is "ready" for signatures.

I propose to modify our Standing Order and Administrative Procedures (see notes after Q2).

Q2. Why attach the order if it is not going to be signed? Why can't they just submit a separate order? They are having to do two different orders since one must have the word "Proposed" in the title.

The reason we are not routinely signing is explained in response to question #1. Apparently some people think it is difficult to "delete" the word "Proposed" prior to printing out the already typed order, thus stating that they have to prepare "two different orders."

Proposal: I suggest that we prepare a First Amended Standing Order Relating to Electronic Case Filing . . . with the same language as our original order, except that it would note that the *Administrative Procedures for Filing, Signing and Verifying Pleadings and Papers by Electronic Means* is being amended.

Then we prepare *First Amended Administrative Procedures* . . . All we need to do here is modify paragraph II. E. 1. It now requires that a proposed form of order be submitted with every motion and other pleading requesting relief. I suggest it be restated as follows:

“Proposed forms of orders shall NOT be submitted with electronically filed pleadings. The actual order to be signed by the court will be submitted in accordance with the procedures outlined below.” (The rest of our procedures require no further amendments)

Q3. Why are they having to be responsible for holding the order until the response deadline has passed? If they file conventionally, they do not have to do this, so why is electronic filing different?

First we need to remember that most bankruptcy courts in the country either do not allow negative notice pleadings at all, or the type of pleadings which can utilize negative notice is severely limited, e.g., TX/E and TX/S don’t allow negative notice on objections to claims. With conventional pleadings, the court staff physically has a document in their hand which shows the name/case no. and type of pleading. It is easy to organize alphabetically, match up with responses if and when filed, and to pull when the requisite time period has passed. However, with electronically filed pleadings the staff not only has no physical document to use for matching up and determining when the time period has passed, they don’t even know it has been filed. It is difficult to run reports every day to determine IF a pleading with negative notice has been filed (as some are filed daily), and to keep up with the time. Furthermore, we run into the same problem with orders as discussed in response to Q#1. Frankly we believed that the attorneys pretty much kept up with the time periods based on the number of calls we receive when orders don’t get signed promptly. However, with the new procedure, judges can rely on the express representations, sign the orders promptly and the difficulties in “finding” negative notice pleadings and keeping up with dates are done away with.

Q4. Having to append that paragraph on orders regarding motions with negative language is very time consuming. Why is that necessary?

With computers and the ability to make “form orders” or to “cut and paste,” it is difficult to understand how a boilerplate phrase is “time consuming”. The purpose of the language is multiple. In the past we have occasionally experienced unfortunate incidents where an attorney files a pleading seeking one form of relief (e.g., motion to dismiss without prejudice; motion to avoid lien) and then submit an order with different relief (e.g., order dismissing with prejudice; order denying claim in full (they did not challenge the amount owed or the liability in the original filing, only the effectiveness of the security). The boilerplate language will allow the judges to rely on the representation, sign the orders without having to verify each case/pleading one at a time as to the time period having properly run without a response having been filed, and similarly rely on the representation as to the consistency of relief being ordered. In the event of a misstatement, the court is not limited by the 10-day appeal period because Rule 60 would open the door to relief. Without this process we might not be able to continue our liberal use of negative notice pleadings.